

STEVENS & LEE, P.C.

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*Proposed Special Litigation Counsel to Appellant
The Official Committee of Equity Security Holders*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

SYNERGY PHARMACEUTICALS INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 18-14010 (JLG)

(Jointly Administered)

**DESIGNATION OF RECORD AND STATEMENT OF ISSUES PRESENTED ON
APPEAL OF THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS**

The Official Committee of Equity Security Holders (the “Committee”) appointed in the chapter 11 cases of the above-captioned debtors (the “Debtors”), by and through its proposed special litigation counsel, pursuant to Federal Rule of Bankruptcy Procedure 8009, hereby designates the record and issues presented on appeal to the United States District Court for the Southern District of New York from the *Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, and (VI) Granting Related Relief*, dated February 26, 2019

¹The Debtors in these chapter 11 cases, along with the last four digits of their respective tax identification numbers, are as follows: Synergy Pharmaceuticals Inc. (5269); Synergy Advanced Pharmaceuticals, Inc. (4596). The address of the Debtors’ corporate headquarters is 420 Lexington Avenue, Suite 2012, New York, New York 10170.

[Docket No. 454], of the United States Bankruptcy Court for the Southern District of New York (the “Order” and the “Bankruptcy Court”, respectively).²

Statement of Issues Presented on Appeal

1. Did the Bankruptcy Court err in allowing the claim of the Prepetition Lenders in an amount that included a \$35 million prepayment premium (“Prepayment Premium”), where the express language of the September 1, 2017 Term Loan Agreement between the Prepetition Lenders and the Debtors clearly provides that the Debtors do not owe any Prepayment Premium to the Prepetition Lenders as a result of the Debtors’ bankruptcy filing?
2. Did the Bankruptcy Court err in allowing the Prepayment Premium in full when the Committee had a pending objection to the Prepayment Premium, which 11 U.S.C. § 502(b) required the Bankruptcy Court to determine?
3. Did the Order impermissibly abrogate a prior order giving the Committee standing to prosecute objections to CRG’s claims including its alleged entitlement to the Prepayment Premium?

² Unless otherwise defined herein, all capitalized terms shall have the same meaning ascribed to them in the Order.

Designation of Items to be Included in the Record on Appeal

Documents filed in Case No. 18-14010 (JLG)

1. Debtors' Motion For Entry of Interim And Final Orders (I) Authorizing The Debtors To Obtain Postpetition Financing, (II) Authorizing The Debtors To Use Cash Collateral, (III) Granting Liens And Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying The Automatic Stay, (VI) Scheduling A Final Hearing, And (VII) Granting Related Relief [Docket No. 15];
2. Declaration Of Gary G. Gemignani In Support Of Chapter 11 Petitions And First-Day Papers [Docket No. 16];
3. Objection to Motion for an Order Authorizing the Debtors to Obtain Postpetition Financing and Reservation of Rights filed by 1992 MSF International Ltd., 1992 Tactical Credit Master Fund, L.P. [Docket No. 48];
4. Interim Order signed on 12/13/2018 (I) Authorizing The Debtors To Obtain Postpetition Financing, (II) Authorizing The Debtors To Use Cash Collateral, (III) Granting Liens And Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying The Automatic Stay, (VI) Scheduling A Final Hearing, And (VII) Granting Related Relief [Docket No. 50];
5. Notice of Hearing on Second Interim Order on Debtors' Motion for Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief [Docket No. 68];
6. Objection to Motion for an Order Authorizing the Debtors to Obtain Postpetition Financing filed by Abhishek Baghel [Docket No. 73];
7. Reservation of Rights of 1992 MSF International, LTD. and 1992 Tactical Credit Master Fund, L.P. to the Second Interim Order Authorizing the Debtors to obtain Postpetition financing and granting related relief [Docket No. 79];
8. Preliminary Objection of the Ad Hoc Committee of Equity Holders to Debtors' DIP Financing Motion and Joinder to Objection Filed by Affiliates of Highbridge Capital [Docket No. 80];
9. Notice Of Filing Of (1) Supplemental Documents In Support Of Debtors Motion For Interim And Final Orders (I) Authorizing The Debtors To Obtain Postpetition Financing, (II) Authorizing The Debtors To Use Cash Collateral, (III) Granting Liens And Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying The Automatic Stay, (VI) Scheduling A Final Hearing,

And (VII) Granting Related Relief; And (2) Senior Secured, Priming And Superpriority Debtor-In-Possession Credit Agreement [Docket No. 87];

10. Objection to Motion for an Order Authorizing the Debtors to Obtain Postpetition Financing filed by Rohit Sharma [Docket No. 89];
11. Objection to Motion for an Order Authorizing the Debtors to Obtain Postpetition Financing filed by Massimo Mearelli [Docket No. 90];
12. Objection to Motion for an Order Authorizing the Debtors to Obtain Postpetition Financing filed by Shareholders [Docket No. 91];
13. Objection to Motion for an Order Authorizing the Debtors to Obtain Postpetition Financing and Requesting Related Relief filed by Official Committee of Unsecured Creditors [Docket No. 102];
14. Joint Plan of Reorganization of Synergy Pharmaceuticals Inc. and its Debtor Affiliate [Docket No. 111];
15. Disclosure Statement for the Joint Plan of Reorganization of Synergy Pharmaceuticals Inc. and its Debtor Affiliate [Docket No. 112];
16. Second Interim Order signed on 12/24/2018 (I) Authorizing The Debtors To Obtain Postpetition Financing, (II) Authorizing The Debtors To Use Cash Collateral, (III) Granting Liens And Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying The Automatic Stay, (VI) Scheduling A Final Hearing, And (VII) Granting Related Relief [Docket No. 113];
17. Notice Of Hearing On Final Order On Debtors' Motion For Interim And Final Orders (I) Authorizing The Debtors To Obtain Postpetition Financing, (II) Authorizing The Debtors To Use Cash Collateral, (III) Granting Liens And Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying The Automatic Stay, (VI) Scheduling A Final Hearing, And (VII) Granting Related Relief [Docket No. 170];
18. Objection of the Ad Hoc Committee of Equity Holders to Debtors' DIP Financing Motion [Docket No. 206];
19. Notice Of Filing Of Third Interim Order (I) Authorizing The Debtors To Obtain Postpetition Financing, (II) Authorizing The Debtors To Use Cash Collateral, (III) Granting Liens And Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying The Automatic Stay, (VI) Scheduling A Final Hearing, And (VII) Granting Related Relief [Docket No. 229];
20. Third Interim Order signed on 1/22/2019: (I) Authorizing The Debtors To Obtain Postpetition Financing, (II) Authorizing The Debtors To Use Cash Collateral, (III)

- Granting Liens And Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying The Automatic Stay, (VI) Scheduling A Final Hearing, And (VII) Granting Related Relief [Docket No. 250];
21. Notice of Hearing on Final Order on Debtors' Motion for Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief [Docket No. 258];
 22. Amended Joint Plan of Reorganization of Synergy Pharmaceuticals Inc. and Its Debtor Affiliate [Docket No. 267];
 23. Amended Disclosure Statement for the Amended Joint Plan of Reorganization of Synergy Pharmaceuticals Inc. and Its Debtor Affiliate [Docket No. 269];
 24. Notice of Appointment of Official Committee of Equity Security Holders [Docket No. 279];
 25. Debtors' Motion for Entry of Order Approving Settlement of Objections to Prepetition Secured Obligations and Prepetition Liens [Docket No. 312];
 26. Motion to File Under Seal [Docket No. 313];
 27. Order signed on 2/6/2019 Granting Motion to File Under Seal [Docket No. 314];
 28. Reservation of Rights with Respect to the Debtors' Motion for an Order Authorizing the Debtors to Obtain Postpetition Financing and Requesting Related Relief filed by Official Committee of Unsecured Creditors [Docket No. 339];
 29. Objection of the Official Committee of Equity Security Holders to The Debtors' Motion for an Order Authorizing the Debtors to Obtain Postpetition Financing [Docket No. 349];
 30. Declaration of Geoffrey Coutts in Support of Objection of the Official Committee of Equity Security Holders to the Debtors' Motion for an Order Authorizing the Debtors to Obtain Postpetition Financing [Docket No. 350];
 31. Objection of the Official Committee of Equity Security Holders of Synergy Pharmaceuticals to the Debtors' Motion for Entry of Order Approving Settlement of Objections to Prepetition Secured Obligations and Prepetition Liens [Docket No. 351];

32. Declaration of Geoffrey Coutts in Support of Objection of the Official Committee of Equity Security Holders of Synergy Pharmaceuticals to the Debtors' Motion for Entry of Order Approving Settlement of Objections to Prepetition Secured Obligations and Prepetition Liens [Docket No. 353];
33. Notice of Filing of Proposed Form of Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, and (VI) Granting Related Relief [Docket No. 377];
34. Omnibus Reply of Official Committee of Unsecured Creditors to Objections to the Debtors Motion for Entry of Order Approving Settlement of Objections to Prepetition Secured Obligations and Prepetition Liens [Docket No. 380];
35. Reply of CRG Servicing LLC and Affiliated Lenders to Equity Committee's Objection to Settlement Agreement [Docket No. 381];
36. Declaration of Andrei Dorenbaum in Support of CRG Servicing LLC's and Affiliated Lenders' Reply to the Equity Committee's Objections to Settlement Agreement [Docket No. 382];
37. Debtors' Omnibus Reply in Support of Debtors Motion for Entry of Order Approving Settlement of Objections to Prepetition Secured Obligations and Prepetition Liens [Docket No. 383];
38. Debtors' Reply in Support of Debtors Motion for Entry of a Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to use Cash Collateral, (III) Granting Certain Protections to Prepetition Secured Parties, and (IV) Granting Related Relief [Docket No. 390];
39. Joinder of the DIP Agent and the DIP Lenders to Debtors' Reply to Equity Committee's Objection to Final DIP Order [Docket No. 406];
40. Motion for Objection to Claim(s) of CRG Servicing LLC and Certain Affiliate Lenders filed by Official Committee of Equity Security Holders [Docket No. 412];
41. Notice of Hearing for Objection of the Official Committee of Equity Security Holders of Synergy Pharmaceuticals to the Claim of CRG Servicing LLC and Certain Affiliate Lenders [Docket No. 413];
42. Transcript regarding Hearing Held on 02/21/2019 [Docket No. 452];
43. Transcript regarding Hearing Held on 02/22/2019 [Docket No. 453];

44. Order signed on 2/26/2019 Approving Settlement of Objections to Prepetition Secured Obligations and Prepetition Liens [Docket No. 450];
45. Final Order signed on 2/26/2019: (I) Authorizing The Debtors To Obtain Postpetition Financing, (II) Authorizing The Debtors To Use Cash Collateral, (III) Granting Liens And Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying The Automatic Stay, (VI) Scheduling A Final Hearing, And (VII) Granting Related Relief [Docket No. 454];
46. Second Amended Joint Plan of Reorganization of Synergy Pharmaceuticals Inc. and Its Debtor Affiliate [Docket No. 474];
47. Second Amended Disclosure Statement for the Second Amended Joint Plan of Reorganization of Synergy Pharmaceuticals Inc. and Its Debtor Affiliate [Docket No. 476];
48. Errata Order signed on 3/7/2019 to Order Approving Settlement of objections to Prepetition Secured obligations and Prepetition Liens [Docket No. 512];
49. Third Amended Joint Plan of Reorganization of Synergy Pharmaceuticals Inc. and Its Debtor Affiliate [Docket No. 516];
50. Third Amended Disclosure Statement for the Third Amended Joint Plan of Reorganization of Synergy Pharmaceuticals Inc. and Its Debtor Affiliate [Docket No. 518];
51. Notice of Appeal of Final Order Authorizing Postpetition Financing [Docket No. 538].

Dated: March 26, 2019
New York, New York

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